

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORMAN ALAN KERR,)	
)	
Petitioner,)	
)	1:22CV194
v.)	1:09CR290-1
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

On June 10, 2024, the United States Magistrate Judge's Order and Recommendation was filed and notice was served on the parties in accordance with 28 U.S.C. § 636(b). Objections were filed within the time limits prescribed by section 636. (Doc. 263.) Petitioner also filed supplemental objections. (Doc. 264.)

The court has appropriately reviewed the portions of the Magistrate Judge's report to which objections were made and has made a de novo determination in accord with the Magistrate Judge's report. The court therefore adopts the Magistrate Judge's Recommendation.

IT IS THEREFORE ORDERED that Petitioner's "Petition for a Claim of Actual Innocence of §§ 924(e) and 922(g)(1) Pursuant to Recent SCT Ruling held in 'Wooden v. US' citing procedure Fed. R. Crim P 51(b) held in Holquin-Hernandez v. U.S." (Doc. 224) and Motion (Doc. 252) seeking to file a petition for a writ of audita querela be treated as second or successive filings under § 2255

and dismissed for failure to obtain certification from the Court Appeals as required by 28 U.S.C. §§ 2255 and 2244 and Fourth Circuit Local Rule 22(d).

To the extent Petitioner in his objections seeks to raise a claim based on the recent decision of the Supreme Court in Erlinger v. United States, 144 S. Ct. 1840 (2024), he would still need to obtain certification from the Court of Appeals for the Fourth Circuit to file a second or successive claim under 28 U.S.C. § 2255(h). And to the extent Petitioner's motion for reconsideration (Doc. 232) was intended to address the Magistrate Judge's briefing order (Doc. 230), as noted in docket entry 261 at page three, note 1, it was properly denied.

There being neither a substantial issue for appeal concerning the denial of a constitutional right affecting the conviction nor a debatable procedural ruling, a certificate of appealability will not issue.

/s/ Thomas D. Schroeder
United States District Judge

July 22, 2024